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C O N F I D E N T I A L SECTION 01 OF 03 OTTAWA 002128

SIPDIS

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SUBJECT: CANADIAN - U.S. DISCUSSION ON MARITIME TRANSIT

RIGHTS AND SHIPRIDER

REF: A. OTTAWA 1869

1B. STATE 126636

Classified By: MINISTER COUNSELOR BRIAN FLORA
FOR REASONS 1.4 (B) AND (D).

11. (SBU) Summary: A U.S. delegation headed by USCG Rear Admiral Sirois met July 11, 2005 with Canadian officials to discuss the US/Canada Great Lakes shiprider proposal and a recent Canadian request for Canadian Coast Guard (CCG) vessels with armed RCMP officers embarked to transit US waters during upcoming patrol operations. Planning for a shiprider "proof of concept" this summer continues to move forward, although it remains unclear whether GOC will have resolved its political or legal issues in time to support the operation before the Great Lakes freeze. Nevertheless, in August, operators on both sides plan to undertake the joint training necessary to conduct the proof of concept. The US also granted standing diplomatic clearance to properly marked Canadian law enforcement vessels to transit US waters on the Great Lakes with armed Canadian officers embarked. The U.S. requested similar authorization from Canada and anticipates a reply by the end of August. End Summary.

US Coast Guard Flag Visit to Ottawa

12. (SBU) A USDEL led by Rear Admiral Dennis Sirois, Assistant Commandant for Operations, USCG HQ met with U.S. Embassy Ottawa country team members and RCMP counterparts to discuss a range of maritime security issues. The USDEL also included Captain Scott Genovese (G-OPL), CDR Greg Buxa (G-OPL-5) and LCDR Brad Kieserman (G-LMI-O). Various members of Amembassy Ottawa joined the USDEL at different meetings throughout the day, including LCDR Al Tubb (COGATT), Jeff Powell (ICE Attaché) and Bruce Cooke (CBP Attaché and RCMP Liaison). Admiral Sirois and USCG delegation members met and dined with RCMP Commissioner Zachardelli, Deputy Commissioner Lange, Assistant Commissioner Succar, and Chief Superintendent Mike McDonnell.

Shiprider

13. (SBU) Admiral Sirois and the OPL team discussed the way ahead for shiprider with RCMP counterparts, while Mr. Kieseman met with the Justice Canada lawyer recently assigned to handle shiprider for RCMP (Debra Richardson) to discuss pending legal issues.

-- Canadian officials (including Justice and Foreign Affairs) advised the USDEL that the GOC had been doing substantial work on resolving Canadian concerns regarding the legal framework for shiprider. Those officials also made clear that interventions by Secretary Ridge and Attorney General Gonzalez with Ministers Irwin Coulter and Anned McLellan had made shiprider a high priority in the maritime security portfolio. The Canadian side indicated that it was engaging seriously on the issues, but had not yet resolved all the issues necessary for the proof of concept.

-- RCMP and USCG lawyers briefed RADM Sirois and Chief Superintendent McDonnell on the basic legal framework for shiprider, and discussed the immigration, customs, weapons carriage, and authority issues that both sides were working through. Both counsels intend for weapons carriage and authority issues to be resolved through cross-designation (the Canadian side noted a potential concern with US weapons/magazine size, but noted that further discussion was premature since the Canadian side was still working on a position).

-- RCMP plans to host a follow-up meeting in Ottawa on July 28 with a view towards finalizing plans for the shiprider proof of concept in August, or at least identifying unresolved issues and potential solutions.

-- Even if issues remain unresolved after the July 28 meeting, the USCG and RCMP intend to move forward in August with the joint training required for shiprider. This

training will require about 10 days and include the curriculum required for cross-designation as officers of the Customs and supernumerary constables (respectively), use of force policies, communication plans, vessel familiarization, and patrol tactics, techniques, and procedures. The training is tentatively scheduled for 15 though 26 August. RCMP provided the USCG with its use of force training materials in anticipation of the training.

Maritime Geographic Inhibitors (Weapons Carriage in transit on the Lakes)

14. (SBU) The USDEL met with Canadian interagency officials to discuss Canada's recent diplomatic note requesting USG concurrence in a concept of operations that would permit Canadian Coast Guard (CCG) vessels with armed RCMP officers embarked to transit through US waters on the Great Lakes during patrol operations beginning July 16, 2005. Mr. Kieserman led the USDEL response and concluded discussions with the GOCDEL on the draft US reply note and way ahead. The delegations discussed the recent London bombings and particular urgency in taking concrete steps to improve maritime transportation security on the shared border between Canada and the U.S.

-- After recalling the work of the shiprider working group and the Cross-Border Crime Forum, USDEL expressed the view that reciprocal grants of standing diplomatic clearance are an appropriate means to address cross-border weapons carriage by maritime law enforcement vessels in transit.

-- The GOCDEL expressed a lack of familiarity with the concept of "diplomatic clearance." The USDEL explained the international law bases for the concept (immunity of warships and other properly marked government vessels on non-commercial government services, UNCLOS and customary international law and practice, survey of the literature). The GOCDEL promised to consult with their pol/mil counterparts, and asked for a follow-up e-mail with cites to authority, and particularly expressed an interest in receiving any existing US legislation or regulation implementing the international law framework. Mr. Kieserman has contacted the Legal Adviser's office at DOS for the requisite information, and promised to provide a response to the GOC by Wednesday or Thursday.

-- The USDEL agreed to grant standing diplomatic clearance to specified vessels owned or operated by the Government of Canada, used only on government non-commercial service, properly marked as law enforcement vessels, carrying identifiable armed Canadian law enforcement officers and routinely transiting U.S. internal waters in the Great Lakes/St. Lawrence Seaway System while en route to conduct law enforcement/maritime security patrols in Canadian internal waters. This clearance will be the mechanism for recognizing the sovereign immunity of the identified public vessels, which disposes of the firearms carriage in maritime transit issues. The note does not permit Canadian law enforcement officers to take law enforcement action while in U.S. internal waters. Hull numbers and vessel names of the covered vessels will be exchanged through operational channels in Ottawa, for now (COGATT will handle for the U.S. side).

-- The GOCDEL explained that it was not prepared to grant such standing diplomatic clearance at the present time, but committed to researching the mechanisms for doing so under Canadian law. FAC Policy Counselor Marc Mes committed to providing regular updates to the USG through Post with a view towards arriving at a more complete response by the end of August (citing numerous Canadian officials on holiday in July and August). Mr. Kieserman agreed to work with Canadian attorneys Michael Zigayer (Justice), Debra Robinson (Justice detailed to RCMP), Masud Husain (FAC), and Catherine Bloodworth (FAC) to provide any necessary background material and respond to queries.

-- The USDEL advised the Canadian side that the US was offering a non-reciprocal grant in the interest of enhancing mutual maritime security, but that such an approach was sub-optimal. The USDEL declined a Canadian suggestion to place its reciprocity request in a separate note, noting that it intended for the US reply note to motivate the Canadian side to reach a favorable and expeditious reply. The US side further cautioned the Canadian side to expect regular inquiries from the US Ambassador, senior country team members, and visiting US diplomatic and law enforcement officials until the US received a satisfactory reply to the reciprocity request.

-- The PSEPC member of the GOCDEL suggested that further proceedings within the Cross-Border Crime Forum on maritime weapons carriage in transit would be required even if the parties reached an accord on the dip clearance framework.

The USDEL did not concur in that view and stated that reciprocal diplomatic clearance would resolve the matter dispositively in the maritime context. Accordingly, if a reciprocal arrangement could be reached, this matter could be considered successfully resolved and working groups on both sides could focus their efforts on the many other maritime security issues before them.

-- FAC lawyers and counselors later assured US counterparts that the GOC fully expected to get to "yes" on reciprocity for maritime weapons carriage in transit using a dip clearance framework.

COMMENT AND ACTION ITEMS

15. (C/NF) In ongoing discussions such as these, as well as in the working groups of the Cross Border Crime Forum, we are making progress in the maritime security area, and may well be on the verge of a shiprider breakthrough before the end of the year. That said, we need to keep up the pressure.

-- State Legal Assistance: In response to Canadian requests, the USCG has requested that DOS Legal assist in responding to queries from FAC and Justice Canada regarding the legal authorities for granting diplomatic clearance to vessels. Mr. David Sullivan (WHA/L) has agreed to facilitate a response.

-- Raising the issues with Senior GOC Officials: US Senior US Officials, including the Ambassador, should keep these issues on the front burner when they meet with their Canadian counterparts. Previous talking points delivered by the Ambassador and US Cabinet level officials and deputies have had results, and our Canadian working level interlocutors are under instructions to make demonstrable progress on shiprider and weapons carriage.

-- Keep Nagging at the Working Level: State/DHS/USCG and other agencies with a stake in this issue should continue to press their GOC contacts for status reports and a timely response to our request for reciprocity.

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DICKSON